

REMARKS

This Amendment is being filed in response to the Final Office Action mailed on June 23, 2010, which have been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the remarks to follow are respectfully requested.

Claims 1-3, 5-8 and 10-21 are pending in this application, where claims 4 and 9 had been canceled without prejudice, claims 2-3, 11-13 and 15-21 had been withdrawn, and claims 1, 5-8, 10 and 14 had been examined. Claims 1 and 8 are independent.

In the Final Office Action, claims 1, 5, 8, 10 and 14 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 7,058,852 (Sims) in view of U.S. Patent Application Publication No. 2005/0195716 (Ko). Further, claims 1 and 5-8 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,469,978 (Ohata) in view of U.S. Patent Application Publication No. 2002/0150009 (Tokumitsu) and Ko. Applicants respectfully traverse and submit that claims 1, 5-8, 10 and 14 are patentable over Sims, Ko, Ohata, Tokumitsu and Andoh for at least the following reasons.

As correctly note on page 5, second full paragraph of the Final Office Action, Sims does not disclose or suggest "wherein the new defect management area is preceded by a user data area or a free area and is followed by a user data area or a free area, a free area being an area free to be assigned either as a user data area or a new defect management

area," as recited in independent claims 1 and 8. Further, this feature of independent claims 1 and 8 is also not disclosed or suggested Ohata and Tokumitsu, as correctly noted in the paragraph spanning page 8-9 of the Final Office Action. Ko is cited in an attempt to remedy the deficiencies in Sims, Ohata and Tokumitsu.

It is respectfully submitted that Ko is not prior art to the present application. The present application was PCT filed on July 8, 2004 as PCT/IB2004/051178, which designates the U.S. and is published in English as WO 2005/008662, as well as claims the benefit of a European Patent Application No. EP 03102205.6, filed on **July 17, 2003**, which is thus the effective filing date of the present application.

It is alleged on page 3, item 5 of the Final Office Action that this foreign priority date cannot be relied on "because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See §MPEP 201.15." This allegation is respectfully traversed. In particular, a review of Public PAIR indicates that a certified copy of the priority application EP 03102205.6 had been filed on January 17, 2006 and is in English including pages 1-19, and 4 pages of drawings including FIGs 1-6. Accordingly, as a certified copy of the priority application EP 03102205.6 in English is of record and had been filed on January 17, 2006, the effective filing date of the present application is **July 17, 2003**.

Ko has a U.S. Filing Date of **August 12, 2003** which is the effective filing date for prior art purposes. As the effective filing date of the present application of **July 17, 2003** is before the Ko effective filing date of **August 12, 2003**, Ko is not available as prior art with


regard to the present application.

Based on the foregoing, it is respectfully requested that independent claims 1 and 8 be allowed. In addition, it is respectfully submitted that claims 2-3, 5-7 and 10-21 should also be allowed at least based on their dependence from independent claims 1 and 8.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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